

BUSINESS LAW SECTION

CORPORATIONS COMMITTEE

COMMITTEE MEETING MINUTES FOR NOVEMBER 1, 2002

**Friday, November 1, 2002
Los Angeles**

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Los Angeles Airport Marriott Hotel in Los Angeles on November 1, 2002. Attendance was:

MEMBERS PRESENT:

Curt C. Barwick
Keith Paul Bishop
Nelson Crandall
Bruce Dravis
Teri Shugart Erickson
Timothy J. Fitzpatrick
James F. Fotenos
Steven K. Hazen
Mark T. Hiraide
Victor Hsu

John H. Marlow
B. Keith Martin
Brian D. McAllister
Stewart Laughlin McDowell
David M. Pike
James R. Walther
Daniel J. Weiser
Neil Wertlieb
Nancy Wojtas
Brian M. Wong

MEMBERS ABSENT:

John C. Carpenter
James K. Dyer, Jr.
Ethna M.S. Piazza
Cynthia Ribas
Randall Brent Schai

LIAISONS PRESENT:

Gayle Oshima, Department of Corporations
Rosalind Tyson, SEC
Todd Vlaanderen, Secretary of State
Cathy Mitchell, Secretary of State.

GUESTS PRESENT:

Gerald F. Phillips, Chair of the State Bar ADR Committee
Terry Miller, California State Bar
Roy J. Schmidt, Jr.

I. Call to Order and Introductions

A. The meeting was brought to order by Co-Chair Bruce Dravis at 9:30 a.m. Mr. Dravis asked members and guests to introduce themselves.

II. Liaisons' Reports and Discussion

SEC. Rosalind Tyson reported that the SEC was holding a public meeting on November 6, 2002 for comments on proposed rules for Sarbanes-Oxley. She noted that the SEC was required to adopt rules by January 26, 2003. Issues expected to be raised at the meeting: the scope of the rules, who can appear before the SEC and how mechanical the rules will be.

A committee was formed to respond to comments that come out of the SEC: Bruce Dravis, Jim Fotenos, Steve Hazen and Keith Bishop.

In response to questions, Ms. Tyson discussed (1) how the SEC will issue releases on Sarbanes-Oxley, (2) how the LA SEC office works and how the different SEC offices interact and coordinate their work, (3) enforcement of unlicensed broker/dealers, (4) West Coast filing deadlines and (5) an 8-K release.

III. AB55

A. The committee discussed Keith Bishop's draft letter to the Secretary of State concerning clean up issues and rulemaking. Keith will reorganize the letter, and he asked for all to e-mail comments to him. (Also, see subsection "D" below.)

B. The committee discussed the procedure and forms for companies that file their Statement of Officers before January, but with a due date after January. (The Secretary of State is creating a new form.) Ms. Mitchell noted that there is no grace period, so after 1/1/03, all forms with incorrect information will be returned.

C. There was consensus to have the task force committee (formed at the October meeting) to provide comments to Ms. Mitchell about any AB55 legislative changes that should be changed legislatively. The committee also discussed having the law more closely aligned with the SEC rules so that a company could simply attach a proxy statement to their Statement of Officers to comply with AB55. Ms. Mitchell indicated that a link to a URL with the proxy information would likely not be enough, as the Secretary of State intends to have its website serve as a portal of all the information that the public would like to see about all companies.

D. A motion was made to approve Mr. Bishop's letter in form, with the idea that the task force committee would confer on final changes. Mr. Bishop would confer with the Executive Committee before sending the letter.

IV. Minutes

The October minutes were approved, with two minor changes: adding Nancy Wojtas to the list of new officers of the committee, and deleting Section VI.E (regarding Mr. Hazen's update on the junction box initiative).

V. Liaisons' Reports and Discussion (con't)

A. Department of Corporations. Gayle Oshima reported on two spot bills - one regarding an investment program and another regarding a lending/fiduciary program. She also reported that Tim Le Bas is participating in an interagency task force on legislative recommendations that are due on January 26, 2003, which would compare Sarbanes-Oxley with the California Corporations Code, and make recommendations.

A question was posed on whether the Committee wants to continue to pursue any changes to California's stock option regulations. There was consensus that the committee should continue this pursuit.

B. Partnerships and Limited Liability Companies Committee. Mr. Hazen reported that the Partnerships and Limited Liability Companies Committee may have a legislative proposal to amend Section 17002.

C. Corporations Committee Liaisons

- Steve Hazen: Partnerships and Limited Liability Companies committee
- Curt Barwick: Corporate law committee
- Jim Fotenos: UCC committee (but will only be attending meetings in the Bay Area)

- Nelson Crandall: Opinions committee
- Teri Erickson: Non-profit corporations committee

D. Legislative Liaison. Terry Miller gave a synopsis of his job as the state bar's representative to the state legislature.

VI. Legislative Proposals

A. Secretary of State Fax Filings. Mr. Dravis reported that we now have a sponsor for this legislation that will permit the Secretary of State to accept faxed filings: Gloria Romero, a state senator from East Los Angeles, and a member of the Rules Committee. The legislation will allow a filing to be faxed to an authorized agent, who can then submit the filing. The bill has been vetted by the Secretary of State's office, and there is no known opposition. Mr. Dravis covered the legislative process, noting that the fax bill will likely be introduced in February 2003, but will likely not be heard until April.

B. Legislative Clean-up Matters. Mr. Bishop presented a list of legislation that needs to be amended.

- Definitions in the broker/dealer and finance lender's laws.
- Section 600(b) refers to a section that's been repealed.
- Section 903 has a reference to needing the approval of "outstanding voting shares," which is not a defined term in the Code, although it does reference Section 152.
- SB188 didn't provide for service of process when a foreign corporation is suspended by the Secretary of State/FTB.

If other members of the committee have additional clean up legislation to add, they were instructed to send an e-mail to Mr. Bishop.

C. Legislative Proposals for 2003. Mr. Dravis noted that any legislation that our committee wishes to propose must get out of the Executive Committee by June of 2003 in order to get it proposed in time to be effective in June 2004.

D. Section 25118(b) Proposal. Mr. Weiser led a discussion on his proposal.

VII. Next Meeting.

The next meeting of the Committee will be held by video conference, with two locations: Mayer, Brown in Palo Alto, and Irell & Manella in Century City.

VIII. Legislative Proposals (con't)

Nancy Wojtas will investigate the idea of having an emergency governance procedure in California, similar to Delaware Code Section 110.

IX. Recent Developments Volunteer

John Marlow and Victor Hsu will take over this responsibility from Ms. Wojtas, and will decide amongst themselves how to divide up the task.

X. Opinions Project.

Nelson Crandall advised the committee that his revised outline will be coming out next month. Mr. Nelson also talked about the relationship between the two opinion committees (the Committee and the Business Law Section). The main issue was whether or not to include historical information on the opinion task force. One open issue that needs to be resolved is whether or not the Committee is co-authoring this with the task force committee of the Business Law Section.

XI. Adjournment

The Committee adjourned at 12:35 p.m.

Teri Shugart Erickson

Corporation Committee Meeting Minutes

